

FILED

JUN 04 2014

Clerk, U.S. District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

ROBERT TIMOTHY SWANK, SR.,

Defendant/Movant.

Cause No. CR 10-86-BLG-SPW

ORDER DENYING RULE 59
MOTION AND DENYING
CERTIFICATE OF APPEALABILITY

On May 19, 2014, the Court denied Defendant/Movant Swank's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Swank is a federal prisoner proceeding pro se.

On June 2, 2014, Swank moved to alter or amend the judgment under Fed. R. Civ. P. 59(e). He states that it is not his fault that his response to an order was not timely.


Most of Swank's claims were denied on the merits. Swank's sole remaining claim was dismissed, not because he did not timely respond to an order, but because he failed to comply with the order despite three opportunities to comply.

A certificate of appealability is not warranted as the grounds for the Rule 59(e) motion are inapposite. Swank's recourse, if any, lies in appeal.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Swank's motion to reconsider (Doc. 91) is DENIED.
2. A certificate of appealability is DENIED. If Swank files a notice of appeal, the Clerk of Court shall immediately process the appeal.

DATED this 4th day of June, 2014.


Susan P. Watters
United States District Court